IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

MFA.No. 1126 of 2000()

OPMV.125/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
.....

APPELLANT/PETITIONER:

P.G.RAJAMMA,D/O.GOPALAN,
PANACHIKKAL HOUSE, VILANGANNUR DESOM,
CHENNAYAPARA P.O., PEECHI VILLAGE,
THRISSUR DIST.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS/RESPONDENTS:

1.T.K.SUNNY,S/O.KUNJAPPAN,
THURUVELIL HOUSE, PODIPPARA DESOM,
PEECHI VILLAGE, PEECHI.P.O.

2.JIJY MATHEW,S/O.MATHEW, MANAKUNNEL HOUSE,
MANNAMANGALAM P.O. (DELETED).

2ND RESPONDENT IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT AS PER ORDER DATED 4.4.2006 IN I.A.NO.893/2006.

3.NATIONAL INSURANCE CO. LTD., BR.THRISSUR.

BY ADV. SRI.JOE KALLIATH FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1126 OF 2000 ()

Dated this the 23rd day of October, 2007

J U D G M E N T

KOSHY,J.

A 27 year old unmarried woman sustained head injury in a motor accident on 11.7.1995. She claimed compensation of Rs.2,48,000/-. The Motor Accidents Claims Tribunal found that accident occurred due to the rash and negligent driving of the 2nd respondent driver and the vehicle was owned by the 1st respondent and insured by the 3rd respondent Insurance company. Total compensation awarded was only Rs.74,000/- inclusive of reimbursement of medical bills. Only quantum of compensation is disputed in this appeal and hence we are considering that point only.

2. According to the claimant, he was employed as a casual worker in the Kerala Forest Research Institute and was getting Rs.2,000/- per month. Since no evidence was adduced,

Rs.1,000/- was only taken as the monthly income. In the F.I.Statement which was given after the accident it was stated that she was employed as a casual employee in the Kerala Forest Research Centre and the above fact was not seriously disputed also while cross examining her. However, no evidence was adduced to show her income. We note that in 1994, when the 2nd Schedule was framed, the notional income of a non-earning person including a minor was fixed as Rs.1,250/- (Rs.15,000/- per year). She was an earning person. Therefore we fix monthly income at Rs.1,500/- per month. With regard to the injuries, Ext.A5 is the wound certificate. It shows that there was a head injury and there was an abrasion on the inside of pinna of left ear and she had inability to open the eye lid of left eye and CT Scan of the brain was taken which shows oedema around the brain stemp. There was palsy of the third cranial nerve also. Ext.A2 discharge summary issued by the Aswini Hospital which shows that she was treated till 20.7.1995 as an inpatient and thereafter she was admitted in the Medical College Hospital and Ext.A1 reference card shows that she was treated upto 6.8.1995. The opthalmologic consultation was

done at Vijayasree Eye Hospital and Mother Hospital as can be seen from Exts.A13 and A14 series. Ext.A18 discharge certificate issued by the Neuro Surgeon shows that she had Head Ache and Dizzeness often as part of Post-Concussion Syndrome. Apart from her hearing loss and Ophthalmic problems, her permanent disability amounts 15%. Ext.A14 certificate issued by the Opthalmic Surgeon shows the following defects:

> "This patient is having residual 3rd cranial nerve palsy in the left eye as a result of which she is having diplopia and giddiness in upward gaze and after reading. She has also got traumatic mydriasis in the left eye and the defective vision, which is not improving with the glasses is due to partial trophy of the optic nerves. These defects cannot be rectified by Medical or Surgical methods."

Ext.A12 certificate issued by the ENT Surgeon reads as follows:

> "This is to certify that I have examined Miss.Rajamma, 31 years, with MRD No.58551 today and taken audiogram. On examination there is sensorineural deafness bilaterally L>R. Her Pure tone qudiogram (PTA) shows bilateral sensorineural

> hearing loss L>R. PTA threshold on R side is 39.28 dB and on L side 42.85 dB. These are approximately equal to 39.28% and 42.85% hearing loss out of a total loss of 100 dB (100%)."

Ext.A12 shows that her hearing capacity was affected in both ears. According to the appellant, at the time of accident she was unmarried. Based on the accident, eye problems, hearing loss etc. arose and nobody is willing to marry her and she is unmarried even now. Marriage prospects are lost. Tribunal did not fix the percentage of disability as to the whole body. Neuro Surgeon has fixed 15% as Neurological disability in Ext.A18 certificate. It is specifically stated in the certificate that it is apart from the percentage of loss of hearing and opthalmic problems. The wound certificate itself shows that there was a head injury and one pinna was affected. Taking all these compensation can be granted for 25% disability for loss of hearing as certified in Ext.A12, opthalmic problems like diplopia, traumatic mydriasis as per Ext.A14 certificate and neuro disability as per Ext.A18 certificate. She was 27 years old. Taking guidelines from the 2nd Schedule, 18 is the apt multiplier. But age was not proved. Hence we take 17 as the

multiplier. Tribunal granted Rs.35,000/- for loss of earning capacity and disability on a rough and ready method. If compensation is calculated for 25% disability, compensation payable will be Rs.1,500 x 12 x $^{25}/_{100}$ x 17 =Rs.76,500/-. Therefore additional compensation payable for disability and loss of earning capacity will be Rs.41,500/-. For loss of earning, tribunal found that she was totally disabled for 3 months and taking Rs.1,000/- as the monthly income and Rs.3,000/- was awarded for the treatment period. Since we have taken Rs.1,500/- as the monthly income she is entitled to get an additional amount of Rs.1,500/- for loss of earning during the period of treatment. She has produced medical bills amounting to Rs.1,205/-. Towards medical and other incidental expenses tribunal has awarded Rs.2,000/-. We are of the view that in view of the difficulties in the eye and loss of hearing, there will be many expenses which are not covered by actual bills. We award Rs.3,000/- more towards the head of treatment expenses. With regard to pain and sufferings tribunal has granted adequate compensation. In the above circumstances, additional compensation payable will be Rs.46,000/-. In view

of the valid insurance coverage 3rd respondent Insurance company is directed to deposit the additional compensation of Rs.46,000/- with 7.5% interest from the date of application till its deposit over and above the decreed amount by the tribunal. Appellant is entitled to withdraw the amount as the accident occurred more than 10 years. With the above observations this appeal is partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1126 OF 2000 ()

J U D G M E N T

23rd October, 2007